

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

BROADCAST MUSIC, INC.; SONGS OF
UNIVERSAL, INC.; BENNY BIRD COMPANY,
INC.; STONE DIAMOND MUSIC CORP.;
ESCATAWPA SONGS, LLC; and SONY/ATV
SONGS, LLC,

Plaintiffs,

WALKINSTOWN, INC. d/b/a SCALLYWAG'S
IRISH PUB & RESTAURANT and MICHAEL
DOYLE, each individually,

Defendants.

Case No. 22-cv-4029

COMPLAINT

Plaintiffs, by their undersigned attorneys, for their Complaint against Defendants Walkinstown, Inc. d/b/a Scallywag's Irish Pub & Restaurant and Michael Doyle (collectively, "Defendants"), allege as follows (on knowledge as to Plaintiffs; otherwise on information and belief):

JURISDICTION AND VENUE

1. This is an action for copyright infringement under the United States Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 *et seq.* (the "Copyright Act"). This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

2. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and 1400(a).

THE PARTIES

3. Plaintiff Broadcast Music, Inc. ("BMI"), is a corporation organized and existing under the laws of the State of Delaware. BMI's principal place of business is 7 World Trade Center, 250 Greenwich Street, New York, New York 10007. BMI has been granted the right to license the public performance rights in approximately 15 million copyrighted musical

compositions (the “BMI Repertoire”), including those which are alleged herein to have been infringed.

4. The Plaintiffs other than BMI are the owners of the copyrights in the musical compositions, which are the subject of this lawsuit. All Plaintiffs are joined pursuant to Fed. R. Civ. P. 17(a) and 19(a).

5. Plaintiff Songs of Universal, Inc. is a corporation. This Plaintiff is a copyright owner of at least one of the songs in this matter.

6. Plaintiff Benny Bird Company, Inc. is a corporation. This Plaintiff is a copyright owner of at least one of the songs in this matter.

7. Plaintiff Stone Diamond Music Corp. is a corporation. This Plaintiff is a copyright owner of at least one of the songs in this matter.

8. Plaintiff Escatawpa Songs, LLC is a limited liability company. This Plaintiff is a copyright owner of at least one of the songs in this matter.

9. Plaintiff Sony/ATV Songs, LLC is a limited liability company. This Plaintiff is a copyright owner of at least one of the songs in this matter.

10. Defendant Walkinstown, Inc. is a corporation organized and existing under the laws of the state of New York that operates, maintains, and controls an establishment known as Scallywag’s Irish Pub & Restaurant, located at 508 9th Avenue, New York, New York 10018 (the “Establishment”), in this district.

11. In connection with the operation of the Establishment, Defendant Walkinstown, Inc. publicly performs musical compositions and/or causes musical compositions to be publicly performed.

12. Defendant Walkinstown, Inc. has a direct financial interest in the Establishment.

13. Defendant Michael Doyle is an officer of Defendant Walkinstown, Inc. with responsibility for the operation and management of that corporation and the Establishment.

14. Defendant Michael Doyle has the right and ability to supervise the activities of Defendant Walkinstown, Inc. and a direct financial interest in that corporation and the Establishment.

CLAIMS OF COPYRIGHT INFRINGEMENT

15. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1 through 14.

16. Since August 2018, BMI has reached out to Defendants over 40 times, by phone, mail, and email, in an effort to educate Defendants as to their obligations under the Copyright Act with respect to the necessity of purchasing a license for the public performance of musical compositions in the BMI Repertoire. Included in the letters were Cease and Desist Notices, providing Defendants with formal notice that they must immediately cease all use of BMI-licensed music in the Establishment.

17. Plaintiffs allege five (5) claims of willful copyright infringement, based upon Defendants' unauthorized public performance of musical compositions from the BMI Repertoire. All of the claims for copyright infringement joined in this Complaint are governed by the same legal rules and involve similar facts. Joinder of these claims will promote the convenient administration of justice and will avoid a multiplicity of separate, similar actions against Defendant.

18. Annexed to this Complaint as a schedule (the "Schedule") and incorporated herein is a list identifying some of the many musical compositions whose copyrights were infringed by Defendants. The Schedule contains information on the five (5) claims of copyright infringement

at issue in this action. Each numbered claim has the following eight lines of information (all references to “Lines” are lines on the Schedule): Line 1 providing the claim number; Line 2 listing the title of the musical composition related to that claim; Line 3 identifying the writer(s) of the musical composition; Line 4 identifying the publisher(s) of the musical composition and the plaintiff(s) in this action pursuing the claim at issue; Line 5 providing the date on which the copyright registration was issued for the musical composition; Line 6 indicating the copyright registration number(s) for the musical composition; Line 7 showing the date(s) of infringement; and Line 8 identifying the Establishment where the infringement occurred.

19. For each work identified on the Schedule, the person(s) named on Line 3 was the creator of that musical composition.

20. For each work identified on the Schedule, on or about the date(s) indicated on Line 5, the publisher(s) named on Line 4 (including any predecessors in interest) complied in all respects with the requirements of the Copyright Act and received from the Register of Copyrights Certificates of Registration bearing the number(s) listed on Line 6.

21. For each work identified on the Schedule, on the date(s) listed on Line 7, Plaintiff BMI was (and still is) the licensor of the public performance rights in the musical composition identified on Line 2. For each work identified on the Schedule, on the date(s) listed on Line 7, the Plaintiff(s) listed on Line 4 was (and still is) the owner of the copyright in the respective musical composition listed on Line 2.

22. For each work identified on the Schedule, on the date(s) listed on Line 7, Defendants publicly performed and/or caused to be publicly performed at the Establishment the musical composition identified on Line 2 without a license or permission to do so. Thus, Defendants have committed copyright infringement.

23. The specific acts of copyright infringement alleged in the Complaint, as well as Defendants' entire course of conduct, have caused and are causing Plaintiffs great and incalculable damage. By continuing to provide unauthorized public performances of works in the BMI Repertoire at the Establishment, Defendants threaten to continue committing copyright infringement. Unless this Court restrains Defendants from committing further acts of copyright infringement, Plaintiffs will suffer irreparable injury for which they have no adequate remedy at law.

WHEREFORE, Plaintiffs pray that:

(I) Defendant, their agents, servants, employees, and all persons acting under their permission and authority, be enjoined and restrained from infringing, in any manner, the copyrighted musical compositions licensed by BMI, pursuant to 17 U.S.C. § 502;

(II) Defendant be ordered to pay statutory damages, pursuant to 17 U.S.C. § 504(c);

(III) Defendant be ordered to pay costs, including reasonable attorney's fee, pursuant to 17 U.S.C. § 505; and

(IV) Plaintiffs have such other and further relief as is just and equitable.

Dated: May 17, 2022

Respectfully submitted,

GIBBONS P.C.

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Attorney(s) for Plaintiffs

Schedule

Line 1	Claim No.	1
Line 2	Musical Composition	American Pie
Line 3	Writer(s)	Don McLean
Line 4	Publisher Plaintiff(s)	Songs of Universal, Inc.; Benny Bird Company, Inc.
Line 5	Date(s) of Registration	10/7/71 2/7/72
Line 6	Registration No(s).	Eu 284299 Ep 295357
Line 7	Date(s) of Infringement	11/2/2019
Line 8	Place of Infringement	Sallywag's Irish Pub & Restaurant

Line 1	Claim No.	2
Line 2	Musical Composition	Born To Be Wild
Line 3	Writer(s)	Mars Bonfire
Line 4	Publisher Plaintiff(s)	Songs of Universal, Inc.
Line 5	Date(s) of Registration	10/10/68 2/5/68
Line 6	Registration No(s).	Ep 250554 Eu 35989
Line 7	Date(s) of Infringement	11/2/2019
Line 8	Place of Infringement	Sallywag's Irish Pub & Restaurant

Line 1	Claim No.	3
Line 2	Musical Composition	I Heard It Through The Grapevine a/k/a Heard It Through The Grapevine
Line 3	Writer(s)	Norman Whitfield, Barrett Strong
Line 4	Publisher Plaintiff(s)	Stone Diamond Music Corp.
Line 5	Date(s) of Registration	8/24/66
Line 6	Registration No(s).	Ep 220700
Line 7	Date(s) of Infringement	6/26/2019
Line 8	Place of Infringement	Sallywag's Irish Pub & Restaurant

Line 1	Claim No.	4
Line 2	Musical Composition	Kryptonite
Line 3	Writer(s)	Bradley Kirk Arnold; Robert Todd Harrell; Matthew Darrick Roberts
Line 4	Publisher Plaintiff(s)	Songs of Universal, Inc.; Escatawpa Songs, LLC
Line 5	Date(s) of Registration	2/28/00
Line 6	Registration No(s).	PAu 2-480-972
Line 7	Date(s) of Infringement	11/2/2019
Line 8	Place of Infringement	Sallywag's Irish Pub & Restaurant

Line 1	Claim No.	5
Line 2	Musical Composition	Stand By Me
Line 3	Writer(s)	Ben E. King; Jerry Leiber p/k/a Elmo Glick; Mike Stoller p/k/a Elmo Glick
Line 4	Publisher Plaintiff(s)	Sony/ATV Songs LLC
Line 5	Date(s) of Registration	2/21/89 4/17/61 8/4/61 9/27/61
Line 6	Registration No(s).	RE 430-905 Eu 667764 Eu 683281 Ep156127
Line 7	Date(s) of Infringement	6/27/2019 11/2/2019
Line 8	Place of Infringement	Sallywag's Irish Pub & Restaurant
